and the mode of payment governing such agreement do not warrant the application of rule 4 of Order 25. Mr. Jag-Jit Singh cited two cases, firstly, *In re Harmony and Montague Tin and Copper Mining Company*[1] (*Spargo's case*) and secondly *Re Moody*[2] in support of the respondents' contention.

In consideration of the materials before the court and bearing in mind the submissions made by counsel for both the applicants and the respondents and in view of the points of law involved and the facts which seem to be in dispute, I am not satisfied that the respondents' contention is devoid of any merit whatever and bearing in mind the scope of Order 25 rule 4 R.S.C., I am inclined to think, indeed in the present case I am disposed to hold that it is not such a case that I ought to summarily strike out the statement of claim and the application must necessarily fail. For these reasons I dismissed the application with costs.

Application dismissed.

Solicitors: *Skrine & Co.; Jag-Jit Singh & Co.*

HOE GUAN INVESTMENT v. COLLECTOR OF LAND REVENUE, BATU PAHAT

[O.C.J. (Ajaib Singh J.) November 19, 1977]
[Muar — Land Reference No. 1 of 1975]

Land Law — Land acquisition — Reference to court — Onus on applicant to show award inadequate — Market value — Sales of adjoining land — Evidence of expert land valuers — Land Acquisition Act, 1950, s. 38(5).

This was a reference to the court by the Collector of Land Revenue consequent upon the application of the applicants requiring him to refer their objection to the amount of compensation awarded by the Collector in respect of land acquired by the State Authority to the court. The Collector had made an award of $1.30 per square foot. The evidence adduced in this case was the sale of adjoining lands and the evidence of expert land valuers.

Held: (1) the onus was on the applicants to show *prima facie* that the award was inadequate and thereupon it was for the Collector of Land Revenue to support his award basing on such evidence as he may have to offer;

(2) in this case taking all factors in regard to the adjoining lands into consideration in relation to the price they were sold and the evidence adduced, the Collector's award ought to be increased to $1.80 per square foot.

Cases referred to:-

(1) *Chuah Say Hai & Ors.* v. *Collector of Land Revenue, Kuala Lumpur* [1967] 2 M.L.J. 99, 100.

(2) *Assistant Development Officer, Bombay* v. *Tayabally Allibhoy* A.I.R. 1933 Bom. 361, 364.

LAND REFERENCE.

Thara Singh Sidhu for the applicants.

Suleiman bin Hashim (Legal Adviser, Johor) for the respondent.

Ajaib Singh J.: This was a reference made to the court by the Collector of Land Revenue under section 38(5) of the Land Acquisition Act 1960 consequent upon the application of the liquidator of Hoe Guan Investment Private Limited to the Collector requiring him to refer the liquidator's objection to the amount of compensation awarded by the Collector in respect of the land acquired by the State authority under the provisions of the Land Acquisition Act 1960. The land acquired is in Lot No. 4723 C.T. 3735 having an area of 576 acres 3 roods. The acquired land itself represents only a small portion of Lot No. 4723 and is 2 acres 1 rood 28 poles in extent. A notice in Form A under section 4 of the Land Acquisition Act was gazetted on May 10, 1973 followed by a declaration of intended acquisition dated March 28, 1974 as required under section 8 of the Act so that the market value of the land acquired had to be determined as at May 10, 1973 (hereinafter referred to as the "relevant date") by virtue of the provisions of paragraph 1(1)(a) of the First Schedule to the Land Acquisition Act 1960.

The collector held an inquiry under section 12 of the Land Acquisition Act on May 4, 1974. At the inquiry one Tan Seow San a representative of the liquidator of Hoe Guan Investment Private Limited testified that the land was vacant land except for a few coconut trees and that it had not been developed yet because it was not considered suitable for development. He said that the land was about 1¼ mile from the centre of Batu Pahat town facing the highway from Muar to Ayer Hitam via Batu Pahat and at the rear was a one way road to Jalan Pasir Tinggi. He said that he valued the acquired land at $4.50 per square foot based on the fact that the land was 1¼ mile from town, a piece of land about 10,000 square feet in front of the hospital was valued at $6.50 per square foot by Encik Talhar, a land valuer, for division purposes and thirdly that there was a land for 5 shophouses in front of the JKR workshop which was valued at $6.25 per square foot by Encik Talhar. The shophouses were built before the war and were still in occupation.

At this stage Tan Seow San requested the Collector for an adjournment of the inquiry for two weeks to enable him to submit a complete valuation report on the land. This was allowed by the Collector and in due course a valuation report dated May 16, 1974 was submitted to the Collector by Messrs C. H. Williams, Talhar & Wong Sdn. In this report the valuer Encik Mohd Talhar bin Abd. Rahman valued the property acquired at $5 per square foot basing his claim as the full market value of the land. He stated that he made the valuation by the comparative approach that is to say sales of land in the vicinity and also in other areas which compared and contrasted with the land acquired. As a further comparison he stated that he considered sales in developed sites and properties and analysed them providing the basis for this valuation and enclosed a schedule showing recent transactions.

On September 28, 1974 the Collector made an award of $1.30 per square foot taking the following factors into consideration (page 10 of record) —

"1. The land acquired is 2 acres 1 rood 28 poles and is a portion of Lot No. 4723 C.T. 3735 which is 576 acres 3 roods 00 pole. The land has not been divided and there is no step taken to develop the land.

2. The land is situated at the junction from Ayer Hitam to Muar and is about 1½ miles from town. Greater parts of the land are surrounded with low class and middle class government quarters in town and at the rear portion is the N.E.B. Building. Looking at this development therefore the area is not yet suitable for industrial or shopping project. It is my opinion that the land is suitable for housing development.

3. The land has been gazetted under section 4 of the Land Acquisition Act on 10, May 1973 and therefore the valuation is based as on 10 May 1973.

4. The valuation made by the land owner was the valuation made in 1974 and the valuation stated in 1970 was not referring to the lot concerned.

5. The land suitable for comparison in this area is Lot 5238 and Lot 5241 which were sold in March 1973 and June 1973 respectively. Lot 5238 was sold at .67 cents per square foot and was acknowledged by the Valuation Office, whereas Lot 5241 was sold at .35 cents per square foot and was increased to .50 cents by the Valuation Office. Lot 5238 is located by the road side of Jalan Bakau Condong, that is on the same road where this land is and is about ½ mile from it, but Lot 5238 is a slightly low land and has 9 temporary buildings on it."

In his evidence before the court Encik Mohd Talhar bin Abd. Rahman referred to his valuation report and he also tendered a plan Exhibit P1. He said that in his opinion the Collector's award of $1.30 per square foot was below the market value of the land prevailing at the relevant date. He said that the Collector had failed to provide for the physical characteristics of the land in terms of the location and size in comparison with the sale he had compared with. Only two lots had been compared by the Collector for this purpose namely Lot 5238 and Lot 5241 which were 21.66 acres and 23.19 acres respectively. Encik Mohd Talhar said that these two lots apart from being larger in area were also low-lying and occupied by squatters. Lot 5238 was recorded as sold at .67 cents per square foot in March 1973. This land was now being converted into residential units as well as 2-storey shop houses. This would entail filling the low-lying area with earth and paying compensation to the squatters. Lot 5241 was situated further north of the acquired lot towards the village of Bukit Pasir. The Collector had said in his report that the transfer of this lot was shown as 35 cents per square foot but it was valued for stamp duty purposes at 50 cents per square foot in June 1973. This land belonged to one Tan Suan Hock who transferred it to B.P. Enterprises Berhad of which he was a major shareholder. This land was similar to lot 5238 and same sort of development was being done on this land. Encik Mohd Talhar said that the acquired land was roughly 2.425 acres. However part of the land was reserved for land scaping. He said that in 1960 a road was built and the land acquired for this road was part of the larger lot 4273. No separate title had been issued for the present acquired lot. The acquired land was generally level.

Encik Mohd Talhar said further that for the purpose of valuing land the location was an important factor. The acquired land was right at the gateway to the more densely occupied area of the town. It was situated at the junction of Jalan Kluang which carried traffic from town to the Federal highway to Ayer Hitam and the junction with Jalan Kluang served as a by-pass for the town of Batu Pahat. It also served as an exit for several residential and commercial houses. In his opinion the acquired land was situated at the prime end of this road and there were already established in and around that area government quarters, hospital complex, the L.L.N., the J.K.R., Transport Department and also the recreational golf club area. The land was also along Jalan Kluang and about a mile away to the east was the industrial area. In this connection the acquired land could be said to be right between the town centre and the industrial centre at the relevant date.

The witness also said that he had considered the description of the acquired land and its potentiality as well as the constraint on it as it was a triangle. In his opinion based on demand and considering the possibilities of alternative uses of the land subject to town planning regulations a small commercial complex of about 4 storeys could be built on this land. This could take the form of car show-rooms and offices related to cars such as insurance and finance companies on the first floor and for either flats or rooms on the second floor. He said that in his original valuation which was exhibited in the reference record he had arrived at a value of $5 per square foot as he had thought that the land could be sub-divided into shops. However after discussion with the planning authorities it was emphasised that a sub-division into shop lots would not be acceptable which meant that the land had to be developed as a complex that is to say one building or one block. On that consideration he felt that a further deduction of the value of about 3% would bring it to $3.50 per square foot which should be the market value of the land at the relevant date.

In support of his views Encik Mohd Talhar produced a schedule of sales Exhibit P2 with another plan of the area Exhibit P3. He said that Lot 3273 the third comparative land in the schedule was situated opposite Lot No. 5238. This was a larger piece of land and was sold at $1.80 per square foot in March 1974 and the land was suitable for commercial development. The adjustment required to compare this lot with the acquired land would be in terms of the size and therefore the need to expand a larger period of development with more units and therefore making it a more risky venture. Development had started on this Lot 3273 which was also low-lying but he was not sure if there were any squatters on this land. He said in all these areas described in the schedule (Exhibit P2) there were all the main services like water, electricity and transport and all within Town Council boundary.

In cross-examination Encik Mohd Talhar began by saying that he agreed that his report formed the valuation in addition to what he had stated in evidence. The court adjourned at this stage and when it resumed after a short interval Mr. Thara Singh for the applicants sought permission to interrupt the cross-examination of Encik Mohd Talhar as he wished to put certain questions to the witness. It appeared that during the recess Mr. Thara Singh was shown a government valuation report which was later put in evidence and marked as Exhibit D5 and he wanted Encik Mohd Talhar to comment on Lot 377 which was mentioned in this report. Mr. Thara Singh's application was allowed although now viewing the position in retrospect I think this further questioning should have come during the re-examination of Encik Mohd Talhar. Anyway referring to Lot 377 in Exhibit D5 Encik Mohd Talhar said that Lot 377 was along Jalan Zabedah and was low-lying with an area of 1.25 acres. It had a road frontage of 130 feet and a longish depth about 400 feet. In July 1973 it was sold at $2.80 per square foot. The earlier transaction on December 12, 1972 was at $1.70 per square foot. The witness said further that there was a rising trend in values of land from 1972 — 1973 onwards. Further-

more in 1976 the values were much higher. He also produced three photographs of the land acquired.

Continuing his evidence in cross-examination Encik Mohd Talhar said that under the heading "Planning and Development Consideration" he had made presumptions that approval would be given for development in respect of the acquired land. He said that the land could be used for a small 3-storey complex and the percentage of the built-up area could be around 50% to 60%. At his valuation at $3.50 per square foot he agreed that the purchaser would pay about $350,000 for the land although he would be using only half of it. He agreed that in arriving at $3.50 per square foot he had hypothetically divided the land into lots and put the value on the lots. As to the rising trend in land values the witness said that one could not say exactly when it started. At the relevant date the rising trend was still on. He was however not able to cite instances of the rising trend in the area. In Lot No. 3273 Encik Mohd Talhar said that the percentage of area which could be built up would be roughly 50% with internal roads and drains to be built.

In re-examination Encik Mohd Talhar said that in the acquired land the unbuilt space could be utilised for parking or as a store. He said that the hypothetical approach had to be made by a buyer as a developer and he had also compared the other lots with the time factor. The acquired lot he said was small and could be built upon faster. The transaction in Lot 3273 was about 10 months after the relevant date. The land was comparatively low-lying and it did not have roads on three sides as in the case of the acquired lot.

The third witness for the applicants was Eddie Chin Swee Guan, the Director, Town and Country Planning, Johore. He said that if the land concerned had not been acquired by the government there would have been no objection for its use as commercial or residential purposes. He said that there were other areas in the vicinity which had been put for commercial as well as residential use.

In cross-examination the witness said that after setting aside for road and car parking only about 51.7% would be left for the building on the acquired lot because of its triangular shape.

Suleiman bin Ahmad now attached to the Bank Bumiputra in Kuala Lumpur as its Manager, Properties and Valuation Department gave evidence on behalf of the Collector of Land Revenue. On the relevant date he was the Government Valuation Officer at Johor Bahru. He said that he was a qualified valuer and he submitted his valuation report in respect of the acquired land Exhibit D5. In the Appendix to the report he had listed transactions for the purpose of comparison. Sales No. 3 to No. 7 were all for potential commercial and residential development. With regard to Lot 3273 (Exhibit P2) the witness said that it was sold in March 1974 at $1.80 per square foot. This lot he said had a dual road frontage and the location was closer to more developed sites such as Batu Pahat Garden and Merdeka Park and in his opinion this lot was a better area for development purposes compared with the land acquired.

In cross-examination he agreed that the transaction in Lot 3273 was after the relevant date. However he was not aware if Lot 3273 was frozen for acquisition purposes. He said that the dates he had mentioned in the Appendix to his report (Exhibit D5) were the registration dates and he would not know the dates ot their actual sales. To a question that considering that the acquired area was in the centre of development and was of small size would he not consider it suitable for development with road frontage the witness agreed that it could be developed but disagreed that it had immediate potential unlike Lot 3273 (Exhibit P2) which was nearer the developed area. He said that the lot to be acquired was surrounded by government quarters and residential quarters and as such there was not attraction for development. He agreed however that it was more accessible to the industrial area as well as to the town and that further along the Kluang Road there were areas developed for houses. In the Appendix to the valuation report the witness said that item 1 was not on a major road but item 2 had a road frontage. Item 3 was 1/2 share but he was not aware if it was undivided half share. Items 4 and 5 were behind Taman Meda with narrow access along Jalan Zabedah. When asked how he had compared these two lots items 4 and 5 with Lot 3273 (Exhibit P2) the witness replied that the transaction in Lot 3273 was effected in 1974 but items 4 and 5 were transacted in October 1972 and as the price went in 1972 the price at 78 cents and 70 cents per square foot was very reasonable. He agreed that items 4 and 5 were low-lying areas. Item 6 was along Jalan Zabedah with a narrow access to Jalan Zabedah. The witness agreed that Jalan Kluang was a major road and Jalan Bakau Chondong was a busy road and that the acquired land was at an important junction. He also agreed that there was a trend in increase of prices in the area. When shown the Collector's reasons for making his award (page 10 of reference record) the witness said that the Collector had compared two lots. He had considered that the land had building potential but restricted to residential buildings.

In re-examination Suleiman bin Ahmad said that all the seven lots in the Appendix to his report had road access. In items 4 and 5 the road frontage was about 132 feet. Jalan Zabedah was also a busy road. He said that the rise in land prices along that areas was after the relevant date. He said that items 1, 2 and 3 were outside the town boundary.

In a reference to court under section 38(5) of the Land Acquisition Act 1960 it is for the applicant who objects to the award on the ground of inadequacy to show prima facie that such an award is inadequate and thereupon it is for the Collector of Land Revenue to support his award basing on such evidence as he may have to offer. Authority for this proposition can be found in the case of *Chuah Say Hai & Ors.* v. *Collector of Land Revenue, Kuala Lumpur*[1] wherein Gill J. (as he then was) quoted the following passage of Broomfield J. in the case of *Assistant Development Officer, Bombay* v. *Tayaballi Allibhoy Bohori*[2]: —

"The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing prima facie that the award is inadequate, then Government must support the award by producing evidence."

In the present reference before the court it was for the applicants to produce evidence to show at least *prima facie* that the award of the Collector was inadequate in relation to the market value of the acquired land as on May 10, 1973. "Market value" is not defined in the Land Acquisition Act 1960, but has been judicially defined in various ways in a large number of cases one of the most favoured being "the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land." The generally recognised methods of ascertaining the market value are first, by considering the purchase price of *bona fide* transactions of the same land or part of the same land as is acquired or of lands adjoining the land acquired, within a reasonable time in relation to the relevant date of acquisition, and having more or less similar advantages as that of the land acquired; secondly, by the number of years purchase of the profit from the land acquired and thirdly, on the evidence of expert land valuers. In the present case the methods which fell to be considered by the court were the first and the third. With regard to the first method the court had to consider any sales of the very same land acquired in a fairly reasonable time before the relevant date or if lands in the neighbourhood had been similarly the subject-matter of *bona fide* transactions. Under the third method the court had to consider the opinion of the valuation experts taken together with other relevant evidence. In the same case of *Chuah Say Hai & Ors.* v. *Collector of Land Revenue, Kuala Lumpur, supra,* Gill J. (as he then was) stated as follows: —

"It is clear from the authorities that where the land acquired was purchased by the owner within a reasonable time of its compulsory acquisition, the price paid affords infinitely the best material for calculating its market value, the reason being that the elements of dissimilarity will be least present when the transaction sought to be applied is a previous purchase of the same property. The owner, of course, can show that since his purchase there has been an all-round increase in the price of land generally, in which case a proper allowance can be made for such increase. Where there has been no recent sale of the same land, only sales within a reasonable period of lands more or less similarly situated in the same neighbourhood and possessing similar advantages are helpful in determining the market value of any land. As no two lands can be precisely similar in all their circumstances and conditions, a suitable allowance can be made for any differences. No hard and fast rule can be laid down for the allowances to be made in respect of the increase in value of the same land or for the differences between the land acquired and the neighbouring lands, but market value is not required to be calculated with mathematical accuracy and precision. What is required is a fair estimate of market value. It is only in the absence of evidence of recent sales of the same land or lands in the same vicinity that other methods of ascertaining the market value can properly be resorted to. Estimates of value by experts are undoubtedly some evidence, but their value is not great, as expert opinion is liable to err, unless it is supported by, or coincides with other evidence."

Tuan Haji Omar bin Haji Mohd Noor and Tuan Haji Abdul Hamid bin Jamal were appointed assessors under section 40 of the Land Acquisition Act 1960. After considering all the evidence before us and the valuation reports put in by both parties we were of the view that the sum of $1.30 per square foot awarded by the Collector was somewhat on the low side. There was no evidence that the land acquired had been the subject-matter of any recent sale so that we had to consider sales in the vicinity within a reasonable time of the relevant date.

There were three transactions which we thought were suitable to some extent for comparison with the acquired land in order to arrive at the market value as at the relevant date. These lots were Lot Nos. 5238, 5241 and 3273. The Collector had considered the first two lots when he made his award of $1.30 per square foot for the land acquired but we felt that he had not taken into account all the circumstances relating to the two lots when he arrived at his figure of $1.30. Lot 5238 was sold at 67 cents per square foot in March 1973 but its area of about 21.65 acres was very much more than the 2½ acres of the acquired land. It is generally accepted that a larger piece of land will fetch less than if sold in smaller lots. This applied also to Lot 5241 which was 23.18 acres and sold in August 1973 at 50 cents per square foot. Then again in the case of Lot 5238 the evidence before us was that this lot was now being converted into residential lots as well as 2-storey shophouses. This would entail filling the low-lying area with earth and paying compensation to squatters on the land. So too with Lot 5241 where a similar type of development was being carried out. Moreover, Lot 5241 was stated to have been sold for 35 cents per square foot but for stamp duty purposes it was valued at 50 cents per square foot and the seller of this land was one Tan Suan Hock who sold it to B.P. Enterprises Bhd. of which he himself was the major shareholder.

Taking all these factors in Lots 5238 and 5241 into account we felt that the Collector's award for the acquired land ought to have been in the region of $1.80 per square foot and not $1.30 per square foot.

The third Lot No. 3273 was not as good a comparison as were Lots 5238 and 5241. Unlike Lots 5238 and 5241 which were transacted within 4 months of the relevant date Lot 3273 was sold some 10 months after the relevant date. It is true that Lot 3273 was also larger than the land acquired, that it was comparatively low-lying and that it did not have roads on three sides as in the acquired lot. But then Lot 3273 had a dual road frontage and its location was closer to the more developed sites such as the Batu Pahat Gardens and the Merdeka Park and in the opinion of Encik Suleiman bin Ahmad DW1 which we accepted Lot 3273 was a better area for development than the land acquired. On the other hand the land acquired was surrounded by government and residential quarters and was therefore less attracted for development although it was more accessible to the industrial area as well as to the town and also that there were areas developed for houses further along Kluang Road. Lot 3273 was sold at $1.80 per square foot about 10 months after the relevant date at a time when the trend in the increase of land values was much higher than at the relevant date so that in all probability the market value of Lot 3273 in May 1973 would have been pretty less than $1.80 per square foot which it fetched in March 1974.

In the event we unanimously decided that the market value of the land acquired as at May 10, 1973 should be $1.80 per square foot and we ordered that the award made by the Collector be varied accordingly.

Order accordingly.

Solicitors: *Goh Soot Huang & Co.*